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SERVICE DATE - FEBRUARY 4, 2004

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34438]

Huron & Eastern Railway Company, Inc.—Acquisition and Operation Exemption—Central
Michigan Railway Company

Huron & Eastern Railway Company, Inc. (HESR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the Central Michigan Railway Company (CMRY) and operate approximately 99.87 miles of rail line, as follows: (1) the Midland Sub, between milepost 0.0 and milepost 15.0; (2) between Durand, MI (milepost 0.0) and Wheeler, MI (milepost 3.5); (3) between Genesee, MI (milepost 101.3) and Paines, MI (milepost 96.0); (4) between Interstate Highway 75 (milepost 17.21) and CSX Yard (milepost 18.07); (5) between Durand (milepost 69.2) and M21 (milepost 80.8); (6) the Anderson Lead, between milepost 79.2 and milepost 81.4; (7) the Owosso Industrial Track, between milepost 80.1 and milepost 0.7; (8) between Marquette, MI (milepost 0.0) and Prairie, MI (milepost 1.7); (9) between Essexville CMR Bridge (milepost 0.0) and Pine Street (milepost 2.87); (10) between Wheeler (milepost 3.5) and MDOT ownership (milepost 5.0);

and (11) the HECLA Belt line between the east line of Patterson Street in West Bay City, MI (milepost 1.9) and the end of the line (milepost 2.8).¹

HESR is also acquiring the right to operate over the Bay City Yard Line² between the south end of North Bay City Yard (milepost 55.77) and the north end of North Bay City Yard at the Centerline of Bangor Road (milepost 2.62).³

Additionally, HESR is acquiring approximately 16.55 miles of incidental trackage rights as follows: (1) over Grand Trunk Western Railroad Company, (a) over the Saginaw Subdivision, between milepost 0.00 and milepost 0.60, (b) over the Holly-Grand Rapids Subdivision, between milepost 65.50 and milepost 69.00,⁴ and (c) over the Flint Subdivision, between milepost 253.0 and milepost 255.4; (2) over D&M, a distance of approximately 5.75 miles from D&M's junction with CMRY near Total Refinery in Bay City, MI, north to a point

¹ An amendment was filed on January 6, 2004, reflecting the correct length of the HECLA Belt line.

² The Bay City Yard Line is owned by the Detroit & Mackinac Railway Company (D&M), an affiliate of CMRY. Lake State Railway Company (Lake State) has an easement to operate over, and CMRY has operating rights over and through, the Bay City Yard Line. HESR will acquire CMRY's right to operate over the Bay City Yard Line, but D&M will remain the owner of the real property and Lake State will retain its easement.

³ This is the entire rail trackage of CMRY, except for a 1.77-mile segment that was approved for abandonment in Central Michigan Railway Company—Abandonment Exemption—in Saginaw County, MI, STB Docket No. AB-308 (Sub-No. 3X) (STB served Oct. 31, 2003).

⁴ See Central Michigan Railway Company—Acquisition and Operation Exemption—Certain Lines of Grand Trunk Western Railroad Company, ICC Finance Docket No. 31059 (ICC served July 13, 1987).

near milepost 3.4 and the Kawkawlin River in Kawkawlin, MI;⁵ (3) over CSX Transportation, Inc. (CSXT) for overhead trackage rights over approximately 2.9 miles of rail line owned by CSXT, from milepost BBO 7 at or near the Mershon Switch east to milepost CB 1 near the Saginaw Yard (a distance of approximately 1.7 miles), then from milepost CB 1 southeast to milepost CC 2.2, at or near the Hoyt Diamond (a distance of approximately 1.2 miles), at which point HESR would connect with the former CMRY main line;⁶ and (4) over CSXT for about 4.0 miles in Saginaw, MI, from the clearance point at the intersection of the CMRY/CSXT connection track of the Grand Rapids Wye Track, through CSXT's Saginaw main, yard, and connection trackage to CSXT's ownership point at the connection with HESR at Saginaw (milepost CBB 2.0) on CSXT's Bad Axe Subdivision.⁷

⁵ See Central Michigan Railway Company–Trackage Rights Exemption–Detroit & Mackinac Railway Company, ICC Finance Docket No. 32404 (ICC served Dec. 14, 1993).

⁶ See Central Michigan Railway Company and CSX Transportation, Inc.–Joint Relocation Project Exemption–in Saginaw, MI, STB Finance Docket No. 34021 (STB served May 17, 2001).

⁷ See Central Michigan Railway Company–Trackage Rights Exemption–CSX Transportation, Inc., STB Finance Docket No. 34241 (STB served Aug. 29, 2002).

Finally, HESR is accepting assignment of trackage rights over lines of CMRY that have been granted to CSXT,⁸ Lake State,⁹ Tuscola and Saginaw Bay Railway Company,¹⁰ and any other agreed upon trackage rights that have been approved or exempted.¹¹

HESR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

Because the projected revenues of the rail lines to be operated will exceed \$5 million, HESR has certified to the Board that the required notice of its acquisition and operation was posted at the workplace of the employees on the affected lines, and a copy of the notice was

⁸ See CSX Transportation, Inc.–Trackage Rights–Grand Trunk Western Railroad Company, ICC Finance Docket No. 31114 (ICC served Sept. 29, 1987).

⁹ See Lake State Railway Company–Trackage Rights Exemption–Central Michigan Railway Company, ICC Finance Docket No. 32018 (ICC served Feb. 27, 1992).

¹⁰ See Tuscola and Saginaw Bay Railway Company–Acquisition and Operation Exemption–Grand Trunk Western Railroad Incorporated and Central Michigan Railway Company, STB Finance Docket No. 33822 (STB served Apr. 12, 2000).

¹¹ On December 3, 2003, Lake State, a Class III rail carrier, filed a letter expressing concerns regarding the proposed transaction. Lake State explained that it was concerned with the potential impact of the transaction because its own viability depends upon the use of trackage rights over a five-mile portion of CMRY's rail line in North Bay City, MI, and because of certain market power issues related to the dominant position already held by HESR's parent, RailAmerica, Inc. However, by letter filed on January 8, 2004, Lake State informed the Board that the concerns raised in its December 3 letter have been resolved and that the letter should be regarded as withdrawn.

On December 22, 2003, correspondence was received from U.S. Congressman Bart Stupak of Michigan supporting consideration of the interests of customers who currently use the services of CMRY, and urging that current rates and routing agreements, as well as other current operating conditions, be considered and maintained to help ensure the continued economic viability of the businesses and industries in Michigan.

served on the national offices of the labor unions of the employees on the affected lines on November 26, 2003. See 49 CFR 1150.42(e). The earliest the transaction could have been consummated was January 25, 2004, the effective date of the exemption (60 days after HESR's November 26, 2003 certification to the Board).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34438, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary